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October 27, 2020

Hon. Edgardo Ramos
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

MEMO ENDORSED

Via ECF

Re: Caraballo v. City of New York, 18 Civ. 10335 (ER) (SN)

Your Honor:

My office represents Plaintiff David Caraballo in the above-entitled action. In that capacity, I write to respectfully request that the Court issue an order directing Defendants to respond to Mr. Caraballo's First Set of Requests for Admission¹ ("RFA") by November 4, 2020. The undersigned met and conferred with attorneys for Defendants, Stephen Suhovsky, Esq., regarding these matters on October 8, 2020. During that conversation, Mr. Suhovsky informed the undersigned that Defendants would only object to the RFA and that a letter stating the same would be forthcoming. On October 16, 2020, Defendants served Mr. Caraballo with their letter of objection.²

Defendants' objection to the RFA boils down to two things: (1) the date for serving requests for admission are past the deadline in the original scheduling order³, and (2) the party's most recent motion for an extension of time (Docket Entry No. 41) and Court's most recent order (Docket Entry No. 42) did not extend the deadline for service of requests for admission.

Defendants' position is unfounded. The parties' August 28, 2020, letter (Docket Entry No. 41) requested an extension of the deadline for all fact discovery, not just the deadlines for depositions. While the letter mentioned that the extension would allow for Defendants to produce documents as well as depositions to be held, it did not ask that the extension be limited to only these items. The deadline for all fact discovery was requested to be extended to November 30, 2020, making the RFA timely.

¹ Mr. Caraballo's RFA is annexed hereto as Exhibit 1.

² A copy of this letter is annexed hereto as Exhibit 2.

³ Docket Entry No. 21.

Second, Defendants' position ignores the fact that they continuously failed to produce documents directly related to Mr. Caraballo's arrest, including the CCRB investigation into it, until September 14, 2020. In fact, as of the writing of this letter, Defendants still are not sure that they have produced all of the documents related to Mr. Caraballo's arrest. Mr. Caraballo's RFA was based on the discovery Defendants produced. Defendants are now objecting to answering the RFA even though their own dilatory conduct resulted in Mr. Caraballo not receiving all of the documents directly related to his arrest until September 14, 2020, well after the deadline for requests for admission to be served. Requests for admission are a tool used to expedite a trial by establishing certain material facts to narrow the range of issues at trial. Foti v. City of Jamestown Bd. of Pub. Util., 2014 U.S. Dist. LEXIS 108376, at *42-43 (W.D.N.Y. Aug. 5, 2014) (citations omitted). Mr. Caraballo could not have reasonably been expected to serve the RFA until after he was aware of the totality of evidence Defendants had in their possession so that he could narrow the range of issues at trial or on a motion.⁴

To the extent that the Court finds that the Scheduling Order should be modified, Defendants' dilatory conduct in failing to provide documents directly related to Mr. Caraballo's arrest, including the CCRB investigation in the same, establishes good cause exists for such modification, and for the Court to direct Defendants to respond to the RFA. Your Honor has previously found that "[u]nder Rule 16(b)(4) of the Federal Rules of Civil Procedure, [a] schedule may be modified only for good cause and with the judge's consent. Good cause is demonstrated when despite [the party] having exercised diligence, the applicable deadline could not have been reasonably met." Wexler v. Allegion (UK) Ltd., 2020 U.S. Dist. LEXIS 162648, at *33-34 (S.D.N.Y. Aug. 25, 2020) (quotations and citations omitted). Here, the deadline in the original scheduling order (Docket Entry No. 21) could not have been met as Mr. Caraballo only recently received all of the documents, to the extent that Defendants do not find more in their continuing search, on September 14, 2020.

Given the foregoing, Mr. Caraballo respectfully requests that the Court direct Defendants to respond to Mr. Caraballo's RFA by November 4, 2020, the deadline set by the FRCP 36. Mr. Caraballo also requests such other and further relief as the Court may deem just and necessary.

Thank you for your time and consideration of this matter.

Respectfully submitted,

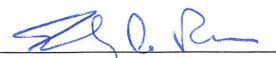
/s/

Gregory Paul Mouton, Jr., Esq.

cc:

Stephen Suhovsky, Esq.
New York City Law Department
Attorneys for Defendants
100 Church Street
New York, NY 10007

Defendants are directed to respond to the arguments raised in this letter no later than October 30, 2020. The response shall be limited to three pages. A discovery conference is set for November 4, 2020 at 11:30 am. SO ORDERED.


Edgardo Ramos, U.S.D.J
Dated: 10/28/2020
New York, New York

⁴ And, even now, there may be more documents forthcoming from Defendants, although depositions are quickly approaching. Defendants have indicated that they are unsure if more documents exist, including recordings of the individual defendants giving statements regarding their arrest of Mr. Caraballo, but that they are searching to determine if more exist.